

(d) The funding formula for individual Tribal shares of all headquarters' funds, together with the comments of affected Self-Governance Tribes, developed under § 137.405 of this subpart; and

(e) Amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location.

### Subpart P—Appeals

**§ 137.410 For the purposes of section 110 of the Act [25 U.S.C. 450m-1] does the term contract include compacts, funding agreements, and construction project agreements entered into under Title V?**

Yes, for the purposes of section 110 of the Act [25 U.S.C. 450m-1] the term "contract" includes compacts, funding agreements, and construction project agreements entered into under Title V.

#### POST-AWARD DISPUTES

**§ 137.412 Do the regulations at 25 CFR Part 900, Subpart N apply to compacts, funding agreements, and construction project agreements entered into under Title V?**

Yes, the regulations at 25 CFR Part 900, Subpart N apply to compacts, funding agreements, and construction project agreements entered into under Title V.

#### PRE-AWARD DISPUTES

**§ 137.415 What decisions may an Indian Tribe appeal under § 137.415 through 137.436?**

An Indian Tribe may appeal:

(a) A decision to reject a final offer, or a portion thereof, under section 507(b) of the Act [25 U.S.C. 458aaa-6(b)];

(b) A decision to reject a proposed amendment to a compact or funding agreement, or a portion thereof, under section 507(b) of the Act [25 U.S.C. 458aaa-6(b)];

(c) A decision to rescind and re-assume a compact or funding agreement, in whole or in part, under section 507(a)(2) of the Act [25 U.S.C. 458aaa-6(a)(2)], except for immediate reassumptions under section

507(a)(2)(C) of the Act [25 U.S.C. 458aaa-6(a)(2)(C)];

(d) A decision to reject a final construction project proposal, or a portion thereof, under section 509(b) of the Act [25 U.S.C. 458aaa-8(b)] and subpart N of this part; and

(e) For construction project agreements carried out under section 509 of the Act [25 U.S.C. 458aaa-8], a decision to reject project planning documents, design documents, or proposed amendments submitted by a Self-Governance Tribe under section 509(f) of the Act [25 U.S.C. 458aaa-8(f)] and subpart N of this part.

**§ 137.416 Do §§ 137.415 through 137.436 apply to any other disputes?**

No, §§ 137.415 through 137.436 only apply to decisions listed in § 137.415. Specifically, §§ 137.415 through 137.436 do not apply to any other dispute, including, but not limited to:

(a) Disputes arising under the terms of a compact, funding agreement, or construction project agreement that has been awarded;

(b) Disputes arising from immediate reassumptions under section 507(a)(2)(C) of the Act [25 U.S.C. 458aaa-6(a)(2)(C)] and § 137.261 and 137.262, which are covered under § 137.440 through 137.445.

(c) Other post-award contract disputes, which are covered under § 137.412.

(d) Denials under the Freedom of Information Act, 5 U.S.C. 552, which may be appealed under 45 CFR part 5.

(e) Decisions relating to the award of grants under section 503(e) of the Act [25 U.S.C. 458aaa-2(e)], which may be appealed under 45 CFR part 5.

**§ 137.417 What procedures apply to Interior Board of Indian Appeals (IBIA) proceedings?**

The IBIA may use the procedures set forth in 43 CFR 4.22-4.27 as a guide.

**§ 137.418 How does an Indian Tribe know where and when to file its appeal from decisions made by IHS?**

Every decision in any of the areas listed in § 137.415 must contain information which shall tell the Indian Tribe where and when to file the Indian Tribe's appeal. Each decision shall include the following statement:

## **§ 137.419**

Within 30 days of the receipt of this decision, you may request an informal conference under 42 CFR 137.421, or appeal this decision under 42 CFR 137.425 to the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the IBIA under 42 CFR 137.425 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

### **§ 137.419 What authority does the IBIA have under §§ 137.415 through 137.436?**

The IBIA has the authority:

- (a) to conduct a hearing on the record;
- (b) to permit the parties to engage in full discovery relevant to any issue raised in the matter;
- (c) to issue a recommended decision; *and*
- (d) to take such action as necessary to insure rights specified in § 137.430.

### **§ 137.420 Does an Indian Tribe have any options besides an appeal?**

Yes, the Indian Tribe may request an informal conference. An informal conference is a way to resolve issues as quickly as possible, without the need for a formal hearing. Or, the Indian Tribe may, in lieu of filing an administrative appeal under this subpart or upon completion of an informal conference, file an action in Federal court pursuant to section 110 of the Act [25 U.S.C. 450m-1].

### **§ 137.421 How does an Indian Tribe request an informal conference?**

The Indian Tribe must file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision. The Indian Tribe may either hand-deliver the request for an informal conference to that person's office, or mail it by certified mail, return receipt requested. If the Indian Tribe mails the request, it will be considered filed on the date the Indian Tribe mailed it by certified mail.

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### **§ 137.422 How is an informal conference held?**

(a) The informal conference must be held within 30 days of the date the request was received, unless the Indian Tribe and the authorized representative of the Secretary agree on another date.

(b) If possible, the informal conference will be held at the Indian Tribe's office. If the meeting cannot be held at the Indian Tribe's office and is held more than fifty miles from its office, the Secretary must arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian Tribe.

(c) The informal conference must be conducted by a designated representative of the Secretary.

(d) Only people who are the designated representatives of the Indian Tribe, or authorized by the Secretary are allowed to make presentations at the informal conference. Such designated representatives may include Office of Tribal Self-Governance.

### **§ 137.423 What happens after the informal conference?**

(a) Within 10 days of the informal conference, the person who conducted the informal conference must prepare and mail to the Indian Tribe a written report which summarizes what happened at the informal conference and a recommended decision.

(b) Every report of an informal conference must contain the following language:

Within 30 days of the receipt of the recommended decision from the informal conference, you may file an appeal of the initial decision of the DHHS agency with the Interior Board of Indian Appeals (IBIA) under 42 CFR 137.425. You may request a hearing on the record. An appeal to the IBIA under 42 CFR 137.425 shall be filed with the IBIA by certified mail or hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. Alternatively you may file an action in Federal court pursuant to section 110 of the Act. [25 U.S.C. 450m-1].